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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Shelly Brady Koontz

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Serial No. 76394882

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R. Alan Weeks of Fellers, Snider, Blankenship, Bailey & Tippens for applicant.

James T. Griffin, Trademark Examining Attorney, Law Office 103 (Michael Hamilton, Managing Attorney).

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Before Quinn, Hairston and Holtzman, Administrative Trademark Judges.

Opinion by Quinn, Administrative Trademark Judge:

An application was filed by Shelly Brady Koontz to register the mark ONE MINUTE WORKOUT ("WORKOUT" disclaimed) for goods identified, as amended, "pre-recorded videotapes and DVDs featuring exercise programs wherein a plurality of exercise movements are successively displayed, each for a predetermined period of time, in series to form the exercise program."[1]

[1] Application Serial No. 76394882, filed April 12, 2002, based on an allegation of a bona fide intention to use the mark in commerce.

The trademark examining attorney refused registration under Section 2(e)(1) of the Trademark Act on the ground that applicant's mark, if applied to applicant's goods, would be merely descriptive thereof.

When the refusal was made final, applicant appealed. Applicant and the examining attorney filed briefs. An oral hearing was not requested.

Applicant contends that her mark is only suggestive of a quick, efficient workout regimen. Applicant asserts that "[a]t most, consumers will perceive Applicant's mark to be suggestive of the unusual feature of the relatively short, cyclic repetition of screen shots, each showing multiple exercise movements." (Brief, p. 4). By way of background on the goods, applicant refers to her patent[2] for a "method of display of video images of exercises" and states that

> the exercise videos are of a standard length, but are unique in allowing for users to mix and match demonstrated exercises to add variety to their workout and to provide, in one tape, an almost endless selection of different routines. To illustrate, three different exercises may be shown simultaneously on the screen along with a timer. Upon expiration of the timer, which may be of any predetermined duration, three new exercises are shown

[2] Although a copy of Patent No. 6468086 was not submitted, applicant clearly wanted the patent to be considered. Further, the examining attorney obtained a copy of the patent and referred to it in his final refusal. Accordingly, we have considered the patent to be of record.

> on the screen, and so on. The user may choose a series of movements which best suit their ability, desire, and current level of fitness....The predetermined period of the timer multiplied by the number of intervals in the video determines the length of the provided "workout"; but the duration of the workout is conventional. (Brief, pp. 1-2)

According to applicant, her videos do not feature workouts of a one minute duration. Applicant claims that in the field of videotapes and DVDs "no one in their right mind would think that an exercise video would be on the order of a single minute long," and that "[w]ith the proliferation of exercise videos in the marketplace, all of which are of the conventional duration of 30-60 minutes, the consumers' expectation is quite to the contrary, which causes the consumer to use her imagination to ponder the nature of Applicant's goods." (Brief, p. 3). In support of her position, applicant relies on the decision in the case of *In re One Minute Washer Co.*, 95 F.2d 517, 37 USPQ 203 (CCPA 1938) wherein the Court found the mark ONE MINUTE to be suggestive as used on clothes washing machines with cycles of seven to eleven minutes duration. In addition, applicant critiques in detail the examining attorney's evidence, contending that it is not probative of the issue herein.

The examining attorney maintains that the mark immediately describes a feature of her exercise videos, namely, that they feature one minute workouts. According to the examining attorney, although applicant's videotapes and DVDs may be of a standard length overall, the individual exercise programs, as acknowledged by applicant, are of a relatively short duration. The gist of the examining attorney's argument is as follows:

> MINUTE refers to "a short interval of time" in addition to 60 seconds. Furthermore, the examining attorney has shown that one minute workouts do exist. Therefore, whether applicant's workout tapes are literally one minute long or whether the tapes are comprised of a series of one minute (or short duration) workouts, the mark ONE MINUTE WORKOUT is merely descriptive of the goods or a feature of them.

The examining attorney dismisses the significance of the court case heavily relied upon by applicant, contending that it was decided before implementation of the Lanham Trademark Act of 1946. In support of the refusal, the examining attorney submitted listings from a dictionary ("minute") and a thesaurus ("brief span"). Also of record are excerpts of articles retrieved from the NEXIS database and of web pages taken from the Internet.

A term is deemed to be merely descriptive of goods or services, within the meaning of Trademark Act Section

2(e)(1), if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. *See, e.g., In re Gyulay,* 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987), and *In re Abcor Development Corp*., 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). A term need not immediately convey an idea of each and every specific feature of the applicant's goods or services in order to be considered merely descriptive; it is enough that the term describes one significant attribute, function or property of the goods or services. *See In re H.U.D.D.L.E.,* 216 USPQ 358 (TTAB 1982); *In re MBAssociates*, 180 USPQ 338 (TTAB 1973). Whether a term is merely descriptive is determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with those goods or services, and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use; that a term may have other meanings in different contexts is not controlling. *In re Bright-Crest, Ltd*., 204 USPQ 591, 593 (TTAB 1979). It is settled that "[t]he question is not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is whether someone who

knows what the goods or services are will understand the mark to convey information about them." *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002); *see also In re Home Builders Association of Greenville, 18 USPQ2d 1313 (TTAB 1990);* and *In re American Greetings Corporation*, 226 USPQ 365 (TTAB 1985). Similarly, as the Board has explained:

> …the question of whether a mark is merely descriptive must be determined not in the abstract, that is, not by asking whether one can guess, from the mark itself, considered in a vacuum, what the goods or services are, but rather in relation to the goods or services for which registration is sought, that is, by asking whether, when the mark is seen on the goods or services, it immediately conveys information about their nature.

In re Patent & Trademark Services Inc., 49 USPQ2d 1537, 1539 (TTAB 1998).

The term "minute" is defined, in relevant part, as "a short interval of time; moment." *The American Heritage Dictionary of the English Language* (3d ed. 1992). A synonym for "brief span" is "a minute or two." *The Original Roget's Thesaurus of English Words and Phrases* (Americanized version 1994).

In addition to the dictionary evidence, the examining attorney also submitted, as noted earlier, NEXIS and Internet evidence. A few of the NEXIS articles are

probative in showing the descriptiveness of ONE MINUTE WORKOUT, and in refuting applicant's contention that consumers would never believe that there is such an exercise regimen as a "one minute workout." One article mentions a "one minute workout" for executives to do at their desks. (*The Hindu*, March 15, 2001). Another article refers to "Jake Steinfeld and his spandex pantherettes doing one minute workouts...." (*The Washington Post*, April 3, 1995). Another article bears the headline "The 1-Minute Exercise Guide"; this article lists both a "1-Minute Workout" and a "5-Minute Workout." (*The Wichita Eagle*, August 8, 2000). Lastly, a web page taken from the Internet shows an on-line shopping site offering a small pre-printed card. The product is named "The One Minute Workout" and is described as "show[ing] 6 safe, effective stretches that take about a minute to perform. Includes stretches for the neck, upper and lower back, arms, legs, hands, and shoulders."

We agree, however, with applicant's criticisms leveled at the probative value of certain of the other NEXIS articles submitted by the examining attorney. In two of the articles, the term "One Minute Workout" refers to a financial program; one refers to a race horse's activity at the track; one is a passing reference to individuals

engaged in grape stomping; and three are the same article, just appearing in different publications.

Based on the probative evidence before us, we find that the mark sought to be registered is merely descriptive of a significant characteristic or feature of the exercise regimen appearing on the videotapes or DVDs, namely that the series of intervals comprising the regimen may be of one minute duration. Although the exercise videos and DVDs are, in applicant's words, "of a standard length," the intervals comprising the entire regimen may be of one minute duration (during which time a particular muscle group is targeted). Indeed, in this time-starved world, purchasers may be particularly attracted to applicant's product which allows the user to use a one minute workout interval to target a particular muscle group. Applicant, in her February 12, 2003 response, directed the examining attorney to applicant's patent Patent No. 6468086 for a "method of display of video images of exercise." The method allows the user to vary the exercise movements selected each time the program on the videotape or DVD is viewed, thereby, according to applicant, reducing boredom and increasing the user's motivation. In her patent, applicant gives an example of the numbers of different exercise "paths" that her product offers, essentially

allowing the user, if he or she is so inclined, to never repeat the same workout. In this example, applicant refers to 15 "one minute intervals." Applicant's argument that her mark is in the singular form and not plural (as in ONE MINUTE WORKOUTS) is not persuasive of a different result. Contrary to applicant's contention, the difference is insignificant in the commercial impression of the mark as likely perceived by consumers.

In view of the above, the term ONE MINUTE WORKOUT is descriptive of a significant feature of the goods.

The decision in *In re One Minute Washer Co.*, supra is distinguishable on its facts from the situation herein. With the clothes washing machine, the wash cycle could not be completed in one minute. This is to be contrasted with applicant's workout regimen consisting of a series of exercises designed so that if a person wants to, he or she can literally complete an exercise interval targeting a particular muscle group in one minute. Further, unlike the earlier case which was devoid of other uses in the trade, the present case includes some evidence of other uses of "one minute workout" in the exercise field.

We conclude that, if used in connection with applicant's exercise videotapes and DVDs, the term ONE MINUTE WORKOUT would immediately describe, without

conjecture or speculation, a significant characteristic or feature of the goods, namely, that the exercise regimen shown therein consists of a series of one minute workouts or intervals, each targeting a particular muscle group.

Decision: The refusal to register is affirmed.